

THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 14th day of July, 2006

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W.P.No.7571 of 2003

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Between:

M. Balaiah & 5 others ... Petitioners

and

State of A.P. rep. by Secretary,
Agriculture & Cooperation (Marketing II)
Department, Secretariat, Hyderabad,
and 2 others ... Respondents

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THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.7571 of 2003

ORDER:

This Writ Petition is filed seeking a Mandamus declaring G.O.Ms.No.92, Agriculture and Cooperation (Mktg-II) Department, dated 19-4-2003 issued by the 1st respondent cancelling the auction conducted on 2-6-1977 for plots bearing Nos.1 to 6 situated at Agricultural Market Committee, Jogipet, Medak district as arbitrary and illegal and consequently to direct the 3rd respondent to register the said plots in favour of the petitioners.

The short question that falls for consideration, in this Writ Petition, is whether the 1st respondent has power to issue G.O.Ms.No.92, Agriculture and Cooperation (Mktg-II) Department, dated 19-4-2003 cancelling the auctions held on 2-6-1977 i.e. after more than 25 years.

It is the case of the petitioners that the 3rd respondent-Agricultural Market Committee, Jogipet issued a notification for auctioning 42 plots, each plot measuring 100' x 20', at Market yard, Jogipet fixing the auction on 2-6-

1977. They had participated in the auction and became highest bidders for plot Nos.1 to 6 i.e. one plot each. As per the conditions stipulated in the auction notice, they deposited Rs.500/- prior to the auction and 1/4th amount immediately after knocking down the auction in their favour. The rest of the amount was to be paid within six weeks and get the registration done in their favour. They could not pay the rest of the amount within the time, as, a suit in O.S.No.5 of 1977 on the file of the learned District Munsif, Jogipet has been filed by some businessmen challenging the very auction. In I.A.No.77 of 1977 in the said suit, an interim injunction was granted not to auction the plots. In view of the said injunction order, the market committee was not ready to receive the balance amount, though they were ready to pay the amount. However, later, the injunction was vacated and the 3rd respondent issued a notification dated 20-3-1978 seeking to auction the rest of the plots excluding the six plots purchased by them. While the matter stood thus, the 3rd respondent issued a notice dated 21-11-1980 calling upon them to deposit the balance amount within 15 days for registration of plots and to start construction, pursuant to the resolution passed by the Market Committee on 23-4-1979. In response to the said notice, they had deposited 3/4th of the amount within the time prescribed. However, even after depositing the entire amount, the Market Committee, which is the authority to register the plots, has not taken steps to register the same in their favour. Therefore, they had approached this Court by way of Writ Petition No.6704 of 1982 seeking a direction to the Commissioner and Director, Marketing & Agriculture, Hyderabad and the Agricultural Market Committee, Jogipet to register the plots allotted in their favour. However, the said Writ Petition was dismissed by an Order dated 6-8-1984 on the ground that the 3/4th amount was not paid within the time. Further, against the Order made in Writ Petition No.6704 of 1982, Writ Appeal No.88 of 1985 was filed and the same was dismissed on 19-4-1989. But, no action was taken for a long time and the plots are lying over vacant nor amounts deposited were returned. Petitioners made several representations in this regard. Meanwhile, the Commissioner and Director of Marketing, who has no authority either to direct the Market committee or to auction the plots under the provisions of the Agricultural (Product and Livestock) Markets Act, has directed the 3rd respondent not to register the plots in their favour. Therefore, they have approached the Government in the year 1990 against the said Order of the Commissioner and Director of Marketing. Thereafter, the Government sought certain information from the Commissioner and Director of Marketing vide Memo dated 21-7-1990. After receiving the report and visualizing the intention of the 3rd respondent and for the development of the Market yard and since the Market Committee collected the entire amount in the year 1980 itself, in spite of not getting any relief in Writ Petition No.6704 of 1982, the Government considering the *pros and cons* issued Memo dated 15-2-2000 directing registration of plots in their favour. In spite of such directions from the Government, the 2nd respondent-Director of Marketing did not implement the same. Therefore, they preferred a Writ Petition in W.P.No.20986 of 2000 seeking to implement the Government Memo dated 15-2-2000 and register the plots in their favour. While the said Writ Petition was pending, under the influence of the 2nd respondent, the 1st respondent-Government issued a Memo dated 20-6-2001 cancelling the earlier Memo dated 15-2-2000 and directed the 2nd respondent to cancel the auction and return the amount remitted by them towards cost of the plots from the available funds of the 3rd respondent together with interest at current Bank rates. Therefore, they filed an amendment petition in Writ Petition No.20986 of 2000 seeking to challenge the Memo dated 20-6-2001. The said Writ Petition was allowed on 5-7-2002 on the ground that no notice was given to them before cancelling the earlier Memo dated 15-2-2000 through Memo dated 20-6-2001. After allowing the said Writ Petition, 1st respondent issued a notice on 20-8-2002 in Memo No.5333/Mktg.II(2)2000-7 directing them to show cause as to why the allotment of plots already made in the auction conducted on 2-6-1977 should not be cancelled without taking into consideration the fact that they have already deposited the entire auction amount before the 3rd respondent, and the reason for issuing the said notice is that the land value has been increased considerably by efflux of time. They submitted an explanation to the said show cause notice stating that neither the Government nor the Director has got any authority to cancel the allotments already made under the auction conducted by the 3rd respondent, which is the authority to acquire and

dispose of the land. Under sub-rules (viii) and (xviii) of Rule-27 of the Rules, the Market Committee alone has got authority to regulate the marketing, execution and enforcement or cancellation of the agreements of sale and also has got power to acquire, hold and dispose of any moveable and immovable properties for the purpose of efficient carrying out of its duties. However, the 1st respondent issued the impugned G.O. cancelling the auction conducted by the 3rd respondent in the year 1977. Challenging the same, the present Writ Petition is filed.

Respondent No.2 filed a detailed counter affidavit denying the allegations made by the petitioner. It is stated *inter alia* that the matter was moved with the Government-1st respondent in Memo dated 30-12-1999 stating that the request of the Agricultural Market committee for permission to register the plots to the petitioners cannot be accepted vide their Office letter dated 19-1-2000. Further, the Government have called for certain information vide Memo dated 28-1-2000 and the reply was sent to the Government through the letter dated 10-2-2000 for examination of the issue and for passing orders. Thereafter, the Government issued Orders to register the plots to 6 successful bidders (writ petitioners) vide Memo dated 15-2-2000; in turn, the 2nd respondent addressed a letter dated 4-4-2000 to cancel the orders issued on 15-2-2000 in view of the fact that the Writ Petition was dismissed by this Court on the ground that the conditions laid down in the auction notice are not complied with by the successful bidders. Accordingly, Government have cancelled the auction and returned the amount with interest at current back rates vide Memo dated 20-6-2001. Meanwhile, the Writ Petitions filed by the petitioners herein were disposed of on 5-7-2002 by setting aside the impugned Memo dated 20-6-2001 on the ground of violation of principles of natural justice. Accordingly, the 1st respondent have fulfilled the legal conditions before cancelling the allotment by issuing a show cause notice on 20-8-2002 and issued the cancellation proceedings dated 19-4-2003. Petitioners received the Demand Drafts from the 3rd respondent-Market Committee and again handed over to the Chairman of the Market Committee for registration of plots and were kept idle in his Office. Petitioners cannot have right to claim title violating auction condition No.8. It is not true to say that the 1st respondent is not the competent authority for taking appropriate decision in the case. Respondent No.3 has followed strictly the Governmental instructions without any deviation. Accordingly, the respondents 1 and 2 have taken action for refunding whole amount remitted by the petitioners by calculating interest as per bank rates, in the shape of demand drafts.

It is the contention of learned counsel for the petitioners that the registration of documents is to be done by the Chairman of the Agricultural Market Committee under Section 31 of the Act. There is no provision either under the Act or the Rules framed thereunder empowering the Director of Marketing or the Government for acquiring or alienating the immovable properties of the market yard or in any manner dealing with the same. The authorities could not have cancelled the allotment made in favour of the petitioners, particularly when they paid the auction money in the year 1980 itself. For no fault of theirs, the petitioners cannot be punished.

Learned Government Pleader appearing for the respondents 1 and 2 also categorically asserted that the Government has power to issue the impugned Order under Rule 143(2) of the Rules made under the Act.

I have given my earnest consideration to the respective submissions of the learned counsel on either side and gone through the entire material made available on record.

Neither in the counter filed by the Government nor in any other material made available on record, it is denied that a suit in O.S.No.5 of 1977 was not filed before the learned District Munsif, Jogipet and in I.A.No.77 of 1977 injunction was obtained not to alienate the auctioned plots. It is an admitted fact that the petitioners have deposited Rs.500/- before the auction and also paid 1/4th of the bid amount as soon as the auction was knocked down in their favour. It is also an admitted fact that after the disposal of the suit, the 3rd respondent issued a notice asking the petitioners to deposit the balance amount within 15 days and the petitioners deposited the same within the time prescribed. Only when the authorities have not registered the plots in their name, petitioners' approached this Court and filed Writ Petition No.6704 of 1982, which was dismissed on 6-8-1984 on technical grounds leaving liberty to the respondent-market committee to consider for registering of plots in favour of the petitioners. Thereafter, another Writ Petition in W.P.No.20986 of 2000 was filed seeking to implement the Memo dated 15-2-

2000 issued by the 1st respondent. When the said Writ Petition was pending, the 1st respondent issued a Memo dated 20-6-2001 cancelling its earlier Memo dated 15-2-2000 and also directed to cancel the auction held on 2-6-1977. In the said Writ Petition, WPMP No.25662 of 2001 was filed seeking amendment of the Writ Petition enabling the petitioners to challenge the Memo dated 20-6-2001 on the ground that the principles of natural justice are violated. In fact, the 2nd respondent, who recommended earlier for allotment of plots, after considering the facts and circumstances of the case and after taking into consideration that the petitioners have deposited the entire amount as early as in 1980 itself, now raised a legal argument saying that the amounts were not deposited as per condition No.8 of the terms and conditions of the auction notice. Further, in this regard, it may be necessary to notice that the State Government in its Memo No.924/Mktg.II(2)/2000, dated 28-1-2000 observed that the report of the Director of Marketing is not tallying on the following :-

(1).....

(2) The Agricultural Market Committee, Jogipet in its resolution dated 23.4.1979 has extended time to pay the balance 3/4th amount to the successful bidders and this fact seems to have not been brought before the Hon'ble High Court.

(3) Though the Hon'ble High Court has dismissed the petition filed by successful bidders, the Agri.Market Committee, Jogipet has neither cancelled the allotment of plots nor issued notices for cancellation of plots. On the other hand, the Agricultural Market Committee, has collected 3/4th balance amount and thus created a legal right indirectly conferring ownership rights on the successful bidders, as they have paid the amount 20 years back i.e. in 1980.

(4)....."

and sought for clarification from the Director of Marketing. Pursuant to the said letter, the Director of Marketing clarified the position through his letter dated 10-2-2000 as under:

"2. The Agri.Market Committee, has extended the time to pay the balance amount, but the Agri.Market Committee has not filed any counter on the plea filed by the bidders, nor the bidders have brought the same fact to the notice of Hon'ble High Court, as such, the case filed by the bidders was dismissed as per the terms and conditions laid down in the auction notice, stipulating a specific period of remittance of bid amount etc.,

3. The Agri.Market Committee ought to have cancelled the allotment to the bidders when they have failed to comply with the terms and conditions laid down in the auction notice, but instead, collected the balance amount by further extending the time to the bidders with wrong notion with misinterpretation of the Circular Orders issued by the Commissioner and Director of Marketing, which resulted a legal right to the bidders, by collecting the balances, some 20 years back."

From the above, it is clear that the 3rd respondent-Agricultural Market Committee passed a resolution for accepting 3/4th of bid amounts from the petitioners, but such resolution was not brought to the notice of this Court in the earlier round of litigation between the parties. Under those circumstances, the whole case has been reopened and the Government, after due consideration of the said letter of the Director of Marketing, through its Memo No.924/Mktg.II(2)/2000-2, dated 15-2-2000, permitted the Director of Marketing to register the plots in favour of the petitioners herein, subject to condition that they shall take up the construction of shops/godowns within a period of two months from the date of registration of plots for development of market yard. Therefore, the proceedings in the earlier round of litigation, have no relevance for consideration in this Writ Petition.

The impugned Order is passed cancelling the auctions conducted on 2-6-1977 on the ground that as per condition No.20 of the terms and conditions of the auction, petitioners failed to pay the entire amount in time and failure to pay the amount due to the 3rd respondent amounts to non-fulfillment of the terms and conditions of auction notice and thus, the auction became null and void. In this regard, it may be necessary to notice condition No.8 and 20 of the terms and conditions:

"8. Those who have been allotted the plots in the auction, they should pay 1/4th amount of the cost of the plot on the day of auction and rest of 3/4th amount should be paid within six weeks from the date of the auction and they can register the same.

20. The Assistant Director of Marketing or any other person authorized by him will have right to change or modify or alter the above conditions."

The condition No.8 was strictly followed by the petitioners and they have paid 1/4th of the amount on the very

same day of the auction and 3/4th of the amount as demanded by the 3rd respondent in the year 1980 in view of the pendency of O.S.No.5 of 1977 and in view of the resolution passed by the 3rd respondent-Market Committee. The 3rd respondent itself passed a resolution extending the time for payment of the 3/4th of bid amount and waived the delay in payment of 3/4th of amount, taking several circumstances into consideration. The respondents having taken the entire amount as early as in 1980, the question of cancelling the auction held on 2-6-1977 would not arise. As contended by learned counsel for the petitioners only on the reason of escalation of prices after more than 25 years, the auction conducted in the year 1977 is sought to be cancelled and amount deposited was directed to be refunded to the petitioners. Government itself has examined the matter in detail in Memo dated 15-2-2000, that too on the recommendations of the 2nd respondent, and found that the condition to deposit 3/4th of the bid amount within six weeks was waived by the 3rd respondent-Market Committee itself through its resolution dated 23-4-1979. In pursuance of the said resolution, a notice dated 21-11-1980 was issued and entire amount was deposited by the petitioners. Now, the respondents cannot turn round and say that because of the non-fulfilment of the terms and conditions of auction, the auction became null and void. Further, the reasons furnished do not stand the scrutiny of law. The only reason furnished is that the amounts were not deposited as per condition No.8, which is not correct, since it was already waived by the 3rd respondent, which is the competent authority to do so. Therefore, the impugned Order is liable to be quashed and accordingly quashed. Respondents are directed to register the sale deeds in favour of the petitioners within a period of one month from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed. No order as to costs.

14-7-2006

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